

## §716.7

1 production facilities declared pursuant to §712.4 of the CWC, the USNA, in coordination with the Department of Commerce, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.

(2) *Schedule 2 plant sites.* The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the plant site and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and UDOC plant sites.* If the owner, operator, occupant or agent in charge of a declared Schedule 3 or UDOC plant site requests a facility agreement, the USNA will ensure that a facility agreement for such a plant site is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, BIS shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the notified person may participate in preparations with BIS representatives for the negotiation of such an agreement. During the initial or routine inspection of a declared facility, the Inspection Team and the Host Team will negotiate a draft facility agreement or amendment to a facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BIS will consult with the affected facility on the contents of the agreements and take the facility's views into consideration during negotiations. BIS will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agreement negotiations between the United States and the OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected

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facility will have an opportunity to comment on the facility agreement. BIS will give consideration to such comments prior to approving final facility agreements with the OPCW. The USNA shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and UDOC facilities are concluded, as appropriate, with the OPCW in coordination with BIS.

(c) [Reserved]

(d) *Further information.* For further information about facility agreements, please write or call: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, Telephone: (202) 482-1001.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

### §716.7 Samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample as provided for in the Convention and the Act and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103. Analysis will be restricted to verifying the absence of undeclared scheduled chemicals, unless otherwise agreed after consultation with the facility representative.

### §716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring with on-site instruments as provided by the Convention. For facilities subject to the CWC, however, such monitoring is not anticipated. The U.S. Government will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

### §716.9 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to the CWC during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories

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of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d) of the CWCR, with the following notation: “Attn: Report of inspection-related costs.”

### § 716.10 Post-inspection activities.

BIS will forward a copy of the final inspection report to the inspected facility for their review upon receipt from the OPCW. Facilities may submit

comments on the final inspection report to BIS, within the time-frame specified by BIS (*i.e.*, at least 7 working days from receipt of the report), and BIS will consider them, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter detailing the issues that require follow-up action, *e.g.*, amended declaration requirement (see §§ 712.7(d), 713.5(d), 714.4(d), and 715.2(c) of the CWCR), information on the status of the draft facility agreement, if applicable, and the date on which the report on inspection-related costs (see § 716.9 of the CWCR) is due to BIS.

### SUPPLEMENT NO. 1 TO PART 716—NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Notice of initial or routine inspection to USNA.	72 hours prior to arrival of Inspection Team at the point of entry (initial); 24 hours prior to arrival of Inspection Team at the point of entry (routine).	48 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.
Duration of inspection ..	As specified in facility agreement.	96 hours .....	24 hours .....	24 hours.
Maximum number of inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per calendar year per plant site.	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USNA*.	12 hours prior to arrival of inspection team at the point of entry.			
Duration of Challenge inspection*.	84 hours.			

\* See part 717 of the CWCR.

### SUPPLEMENT NOS. 2-3 TO PART 716 [RESERVED]

## PART 717—CWC CLARIFICATION PROCEDURES (CONSULTATIONS AND CHALLENGE INSPECTIONS)

Sec.

717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

717.2 Challenge inspections.

717.3 Samples.

717.4 Report of inspection-related costs.

717.5 Post-inspection activities.

AUTHORITY: 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

### § 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. States Parties may attempt to resolve